

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 8914 of 1994

Between:

D.Bheem Reddy S/o.Durga Reddy
R/o.Patighanpur , Patancheru Mandal Medak Dist.

..... PETITIONER

AND

1 The State of A.P., Rep., by its Secretary,
Housing and Municipal Administration Department,

Hyderabad.

2 The Municipal Corporation of Hyderabad, Rep., by

its Commissioner, Tankbund Road , Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records relating to the notifications issued under Sec.3(1) Dt: 2-1-1992 and Sec.3(2) Dt:16th July.1992 of the A.P. Slum Improvement (Acquisition of Lands) Act,1956 and quash the same by issuing a writ , order or direction more particularly one in the nature of writ of Certiorari by duly declaring the notifications issued under Section 3(1) & 3(2) of A.P. Slum Improvement (Acquisition of Lands) Act , 1956 as illegal, arbitrary , violative of principles of natural justice and also violative of Articles 14 and 300-A of the Constitution of India and further direct the respondents herein to deliver the possession of the lands to the petitioner and pass such other order or orders.

Counsel for the Petitioner: MR.V.RAVI KIRAN RAO

**Counsel for the Respondents: GP FOR MUNICIPAL ADMN. & URBAN
DEVELOPMENT**

The Court made the following :

ORDER:

The petitioner seeks invalidation of the notifications issued under Section 3(1) dated 2.1.1992 and notification issued under Section 3(2) dated 16.7.1992 under the A.P. Slum Improvement (Acquisition of Land) Act, 1956 (hereinafter called 'the Act' for brevity) by issuing a writ of Certiorari. He also seeks a direction to the respondents to redeliver the land admeasuring 586.51 Sq.yds. in T.S. No. 2, Ward No. 49, Block-D (old Sy.No.78/P) of Nampally village, Hyderabad to the petitioner.

The facts in brief necessary for appreciating the controversy in the writ petition may be noticed. Petitioner's father allegedly purchased land admeasuring 1780 Sq.yds. in the above mentioned T.S. number from late Mohiuddin Ali Khan s/o Nawab Faih Jung Bahadur under two registered sale deeds. Father of the petitioner died in the year 1950. After that, the petitioner and his two brothers Narsimha Reddy and Kista Reddy orally partitioned the property on 15.2.1955 and since then the petitioner claims to be in possession of the land to an extent of 586.51 sq.yds. The petitioner allegedly constructed three sheds with asbestos sheets in the year 1981 and permitted 15 to 20 persons to take shelter with their families. Since 1988, these persons are protecting the property on behalf of the petitioner. The Municipal Corporation of Hyderabad also issued demand notices for payment of house tax under Section 220 of Hyderabad Municipal Corporation Act, 1955 in 1981.

The second respondent herein issued a notification under Section 3(1) of the Act, which was published in A.P. Gazette part-I dated 2.1.1992 declaring the area known as Fasih Jung Lane as slum area. The land, which fell to the share of the petitioner is also covered by the notification. There is no basis for declaring the area as slum area and the notification was issued in a mechanical manner for extraneous considerations. The second respondent also issued notification under Section 3(2) of the Act and got the same published in A.P. Gazette No. 29 dated 16.7.1992 stating that the Commissioner is satisfied that it is necessary to acquire the land which was declared as a slum. It is also mentioned in the notification that the owners and persons interested in the land were

issued notices dated 13.2.1992 to show cause as to why lands belonging to them should not be notified as slum area and should not be acquired with a view to undertaking the work of improving area. The petitioner alleges that no notice was issued to the petitioner and the individuals who are owners of the land. The notification issued by the second respondent was without consulting the Director of Town Planning and therefore, the same is illegal and void. The petitioner also challenges the provisions of A.P. Slum Improvement (Acquisition of Land) Act, 1956 as offending Article 14 of Constitution of India as according to the petitioner the provisions of the Slum Improvement Act in comparison with Land Acquisition Act, 1894 are not beneficial to the owners in the matter of compensation. He also alleges the Act has no application to the Hyderabad Corporation.

The second respondent filed a counter affidavit as well as additional counter affidavit. In the counter affidavit it is stated that Fasih Jung Lane was identified as a slum and included in the list of slum for the purpose of providing civic amenities. After considering the report of the Officers Committee notification under Section 3(1) of the Act was issued as the land was identified as a private land. The particulars of ownership were obtained from the Mandal Revenue Officer, Musheerabad. As per the records furnished by the Revenue officials notices under Section 3(1) dated 13.2.1992 were issued to Sri Narasimha Reddy and Smt. Ahmadunnisa Begum. The Notices could not be served on the petitioner and other owners, as their whereabouts could not be ascertained. A panchanama was conducted before the witnesses and the notices were affixed in the presence of witnesses on the spot. The petitioner is aware about the notice published in A.P. Gazette dated 2.4.1992 inviting objections of the owners and the interested persons. But the petitioner failed to file any objections for declaring the said area as a slum. The notices were issued to the owners after obtaining the ownership particulars from the revenue authorities and therefore, the provisions of Section 3 (1) and (2) were duly complied with. The second respondent specifically denied all other allegations made in the petitioner's affidavit accompanied with the writ petition.

Sri V. Ravi Kiran Rao, learned counsel for the petitioner submits that the issuance of notification under Section 3(2) is mandatory and any non-compliance with the mandatory provisions would render the notification void. He submits that if notice is issued before publishing notification under Section 3(2), the owner can show cause not only against the Acquisition of the Land but also against the very declaration of the area as a slum under Section 3(1) of the Act. The area is well developed with all facilities and more than 20 families are living. Therefore, the very declaration of the area as a slum is without application of mind. He would also urge that the petitioner was issued demand notices for property tax by the same Municipal Corporation and when the petitioner's name is very much mentioned as owner in the property tax register, the Municipal Corporation ought to have issued a notice to the petitioner, who is owner of the land admeasuring 586 Sq.yds.

The petitioner has produced a copy of the notice issued under Section 222 of Hyderabad Municipal Corporation Act, which prima facie show him as the person liable to pay the property tax. This Court, therefore, directed the learned standing counsel to produce the original property tax register and also to file affidavit

explaining the position.

On 21.6.2004 the original assessment register for property tax for relevant years was produced before this Court. After perusing the same, the counsel was directed to file an affidavit and also furnish the Xerox copies to the other side. An additional affidavit is filed before this Court along with attested copies of the extracts from the property tax register. This was duly furnished to the learned counsel for the petitioner.

In the additional affidavit filed by the Deputy Commissioner, Circle-VI, it is stated that in the assessment register of the property tax (Library Cess and Surcharges) ('the property register' for brevity) for the period from 1968 to 1975, the name of one Narasimha Reddy was shown as the person liable for property tax regarding House No. 5-3-984. However, in the records relating to 1975-83 the property bearing No.5-3-984 was split into 5-3-984, 984/1 and 984/2 and for all the three premises though originally the name of Narasimha Reddy was shown as the person primarily liable to pay the property tax, the name of Bheem Reddy was interpolated and the clerk put the initial in the year 1981. The same was not signed or endorsed by the Deputy Municipal Commissioner who is the competent authority for mutating the name in the said register. In all the records from 1983 onwards, again the name of Narasimha Reddy was shown as the person liable to pay the tax. The files which are referred to in the register while interpolating the name of the petitioner were not traced in the office and it could not be ascertained as to how the said interpolation was made by a clerk without any authority or signature of the Deputy Commissioner. Further, neither Narasimha Reddy nor the petitioner paid any property tax from 1983 till today and the property tax remained unpaid.

This Court with assistance of the learned standing counsel has perused the property tax register from 1968 to 1975 and also from 1975 to 1983. These entries would clearly show that the name of the petitioner was interpolated in the year 1981 presumably to create some evidence to prove the case of the petitioner in this writ petition. In so far as other assessment years are concerned, the property is shown to be in the name of Narasimha Reddy. In the absence of any denial of the fact that Narasimha Reddy was issued notice and also the notice was affixed at the site, it cannot be said that the mandatory provisions of Section 3(20) were violated. Furthermore, under Section 11(1)(c) (ii) of the Act, if the notice cannot be delivered or tendered to the person, it can be served by affixing a copy of it on the outer door of some conspicuous part of the premises. That was precisely what was done by the second respondent, which is not denied. Therefore, I do not see any merit in the writ petition.

The writ petition, for the above reasons, is accordingly dismissed without any order as to costs.

(V.V.S.RAO, J.)

30th June 2004.

Tsr.

To

1 The Secretary, State of A.P.,
Housing and Municipal Administration Department,

Hyderabad.

2 The Commissioner, Municipal Corporation of Hyderabad,
Tankbund Road , Hyderabad.

3 Two CCs to Government Pleader for Municipal Administration
and Urban Development, High Court Buildings, Hyderabad. (OUT)

4 Two CD copies.